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FM AMEMBASSY SANAA  
TO SECSTATE WASHDC IMMEDIATE 3263  
INFO DIRFBI WASHDC PRIORITY  
DEPT OF JUSTICE WASHDC PRIORITY  
NSC WASHINGTON DC PRIORITY

S E C R E T SECTION 01 OF 02 SANAA 003591

STATE FOR U/S GROSSMAN S/CT FOR TAYLOR/POPE, NEA FOR CROCKER  
D FOR MCNAMARA  
FBI FOR DIRECTOR MUELLER  
JUSTICE FOR JIM REYNOLDS

E.O. 12958: DECL: 10/19/2017  
TAGS: [PREL](#) [PTER](#) [PGOV](#) [PINS](#) [YM](#) [US](#)  
SUBJECT: USS COLE: INVESTIGATION AND PROSECUTION

CLASSIFIED BY: AMB: EJHULL FOR REASONS 1.5 (B), (C), AND (D).

11. (S/NOFORN) BEGIN SUMMARY: THE YEMENI GOVERNMENT IS MOVING TOWARDS KEY DECISIONS REGARDING THE USS COLE INVESTIGATION, AND THE SUSPECTS IT HOLDS FALL INTO FOUR CATEGORIES: A) THOSE WHO WILL FACE TRIAL SOON; B) THOSE WHOSE TRIAL WILL CONTINUE TO BE HELD IN ABEYANCE AT U.S. REQUEST; C) THOSE WHO WILL BE RELEASED; AND D) THOSE THE YEMENI GOVERNMENT IS UNLIKELY TO PROSECUTE, BUT WHOM WE SHOULD PURSUE IN OTHER WAYS. AMBASSADOR'S RECOMMENDATIONS INCLUDE: PROVIDING LEGAL ASSISTANCE TO YEMEN FOR CATEGORY (A) AND PURSUING SEALED INDICTMENTS FOR CATEGORY (D). SEE FULL REPORT AND RECOMMENDATIONS BELOW. END SUMMARY.

12. (S/NOFORN) DURING GENERAL FRANKS'S VISIT OCTOBER 17, AMBASSADOR RAISED WITH PRESIDENT SALEH PROSECUTION OF USS COLE DEFENDANTS. NOTING THE RECENT ATTACK ON THE FRENCH TANKER, AMBASSADOR ARGUED THAT A VIGOROUS PROSECUTION OF TERRORISTS RESPONSIBLE FOR THE USS COLE ATTACK WAS A NECESSARY SIGNAL FOR TERRORISTS PLANNING OTHER ATTACKS. SALEH INITIALLY COMMENTED THAT THE CASE WAS "SUB JUDICE" AND NOT A POLITICAL ISSUE. HE QUICKLY ADDED THAT YEMENI JUSTICE WOULD BE TOUGH AND INCLUDE LONG SENTENCES AND EVEN EXECUTIONS. TO FOLLOW UP AMBASSADOR'S MARKER, EMBASSY PROPOSES FOLLOWING THOUGHTS ON THIS CASE.

13. (S/NOFORN) THE FBI/NCIS TEAM THAT IS WORKING HERE ON THE USS COLE INVESTIGATION IS DOING A SUPERB JOB WITH THE YEMENIS, AND IN THEIR UPDATES FOR AMBASSADOR IT IS BECOMING CLEAR THERE ARE A NUMBER OF ISSUES FOR WASHINGTON TO CONSIDER. THE GOVERNMENT HERE IS IN THE PROCESS OF DECIDING FINALLY WHICH SUSPECTS TO PROSECUTE AND PUT ON TRIAL, WHAT KIND OF CASES TO PRESENT, AND WHAT DISPOSITION TO MAKE OF REMAINING SUSPECTS. THE KEY U.S. OBJECTIVE IN THIS IS TO SEE THAT THE GUILTY ARE CONVICTED AND PUNISHED, BUT THIS GOAL IS LIKELY TO BE SATISFIED ONLY PARTIALLY BY YEMEN'S DECISIONS. IN ADDITION, IT APPEARS THAT BECAUSE OF SHORTCOMINGS IN PSO'S ABILITY TO PREPARE A CASE FOR THE PROSECUTORIAL ARM OF THE YEMENI GOVERNMENT, THERE IS A NEED FOR LEGAL ASSISTANCE FROM THE U.S. PROSECUTION SIDE.

14. (S/NOFORN). FOR THE SAKE OF CLARITY, HERE ARE FOUR DIFFERENT CATEGORIES OF YEMENI-HELD SUSPECTS IN THE COLE CASE, AND AMBASSADOR'S RECOMMENDATIONS FOR EACH.

15. (S/NOFORN) THE FIRST CATEGORY CONTAINS EIGHT AND POSSIBLY NINE INDIVIDUALS. THESE WE UNDERSTAND THE PSO CONSIDERS THAT IT HAS EVIDENCE AND THE GOVERNMENT'S ATTORNEY GENERAL HAS THE INTENTION TO PROSECUTE, CONVICT, AND PUNISH. THOSE EIGHT INDIVIDUALS ARE:

-- MURAD AL-SURURI  
-- ALI AL-MURAKAB  
-- AHMAD AL-SHINI  
-- YASSER AL-IZZANI  
-- YASSER AHMAD QASSIM  
-- ABDULLAH AL-HAKEEM  
-- MUHAMMED DARAMAH  
-- NABIL SALUH

THE NINTH INDIVIDUAL, WAHIB AL-KHODR, THE PSO CONSIDERS IN THE SAME CATEGORY AS THE OTHER EIGHT, BUT IS LESS SURE OF ITS EVIDENCE AGAINST HIM.

FOR THIS GROUP, AMBASSADOR RECOMMENDS THAT UNLESS THE USG HAS EVIDENCE TO THE CONTRARY, EXONERATING OR MITIGATING THESE INDIVIDUALS, THAT WE OFFER TO ASSIST THE YEMENI PROSECUTION IN THESE CASES. OUR FBI/NCIS TEAM HERE ADVISES THAT WHILE PSO MAY HAVE EVIDENCE THAT IT CONSIDERS TO BE COMPELLING, FROM A LEGAL PERSPECTIVE, THE CASES MAY NOT BE EQUALLY STRONG. IN PARTICULAR, THEN, LEGAL ASSISTANCE FROM THE U.S. ATTORNEY'S OFFICE IN THE SOUTHERN DISTRICT OF NEW YORK COULD BE INVALUABLE TO THE YEMENI ATTORNEY GENERAL'S TEAM AS IT SEEKS TO SHAPE THESE PROSECUTIONS, USING WHATEVER EVIDENCE MAY ALREADY BE IN THE FILE CASES PROVIDED BY THE PSO AND, ALSO, ANY ADDITIONAL INFORMATION THAT THE USG MAY BE ABLE TO DEVELOP FROM OTHER SOURCES. SUCH ASSISTANCE SHOULD BE PROVIDED ASAP, AS YEMENI OFFICIALS ARE ON PUBLIC RECORD STATING THAT COLE PROSECUTIONS WILL BEGIN IN THE NEAR FUTURE. A STRONG PROSECUTION CASE OBVIOUSLY SERVES BOTH U.S. AND YEMENI INTERESTS, AND WE SHOULD ASSIST IN EVERY WAY POSSIBLE.

16. (S/NOFORN) THE SECOND CATEGORY CONTAINS THREE INDIVIDUALS. THESE WERE IDENTIFIED IN FBI DIRECTOR'S LETTER PRESENTED TO PRESIDENT SALEH ON SEPTEMBER 25 - INDIVIDUALS WHOM THE U.S. WOULD LIKE TO BE HELD BUT NOT SENT TO TRIAL UNTIL THE U.S. COMPLETES INDICTMENTS AGAINST ABD AL-RAHIM NASHIRI, TAWFIQ BIN ATTASH, AND AHMAD AMIN. THESE THREE INDIVIDUALS ARE:

- FAHD AL-QUSO 'A
- JAMAL AL-BADAWI
- AHMAD AHMAD HASAN AMIN (ABU JAFAR AL-TAYYAR)

WE EXPECT THE YEMENI GOVERNMENT WILL CONTINUE TO ACCEDE TO THE U.S. REQUEST TO HOLD IN ABEYANCE GOING TO TRIAL FOR THESE THREE. ACCORDINGLY, AMBASSADOR RECOMMENDS THAT U.S. INDICTMENTS AGAINST NASHIR, ATTASH, AND AMIN BE COMPLETED AS SOON AS POSSIBLE SO THAT FURTHER DELAY IS AVOIDED. SUCH A STEP WILL HELP THE YEMENIS SEE THAT WE ARE DEALING WITH THE COLE INVESTIGATION IN ITS ENTIRETY, AS PART OF OUR COMPREHENSIVE EFFORTS AGAINST AL-QAEDA. INDEFINITE DELAY COULD HAVE UNFORESEEABLE COSTS.

17. (S/NOFORN) THE THIRD CATEGORY CONTAINS FOUR INDIVIDUALS. THESE FOUR THE YEMENIS HAVE DETERMINED THEY DO NOT HAVE SUFFICIENT EVIDENCE TO PROSECUTE, AND ACCORDINGLY WOULD RELEASE. THESE FOUR ARE:

- ABD AL-SALAM AL-FAQIR
- ABD AL-HAMID MUTHANA
- ABD AL-KARIM AL-RIMI
- SA'EED AL-WAHSH

FBI/NCIS INVESTIGATORS IN SANAA AGREE THAT THERE IS LITTLE OR NO EVIDENCE OF CRIMINAL ACTIVITY FOR THESE INDIVIDUALS. UNLESS THE U.S. HAS EVIDENCE ELSEWHERE IMPLICATING THESE FOUR WHICH WOULD STRENGTHEN A YEMENI PROSECUTION OF THEM, AMBASSADOR RECOMMENDS THAT WE INFORM YEMEN OF NO OBJECTION TO THEIR RELEASE.

18. (S/NOFORN) THE FOURTH CATEGORY CONTAINS TWO INDIVIDUALS. THESE HAVE PRIOR ASSOCIATIONS WITH THE PSO AND THEREFORE WE CANNOT EXPECT YEMEN WILL PROSECUTE THEM. THESE TWO ARE:

- BASHIR AL-SHADADI
- AHMAD AMIN (ALSO INCLUDED IN SECOND CATEGORY.)

WE UNDERSTAND THAT U.S. EVIDENCE LEAVES NO DOUBT OF THE INVOLVEMENT OF THESE TWO IN THE COLE ATTACK. ACCORDINGLY, AMBASSADOR RECOMMENDS THAT THE JUSTICE DEPARTMENT SEEK A SEALED INDICTMENT FOR THESE TWO INDIVIDUALS, AND IN THE EVENT THEY TRAVEL OUTSIDE YEMEN, THE U.S. MAY BE ABLE TO SECURE THE COOPERATION OF A FRIENDLY GOVERNMENT TO ARREST AND HAND THEM OVER TO U.S. AUTHORITIES FOR U.S. PROSECUTION.

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